

JOSEPH P. MARTIN
Claimant

MARTIN HARVESTERS
Respondent

U.S.F. & G. Insurance Carrier

ORDER

APPEARANCES

RECORD AND STIPULATIONS

ISSUES

- (1) Whether claimant suffered accidental injury arising out of and in the course of his employment with respondent on the date alleged.
- (2) Whether the Administrative Law Judge exceeded his jurisdiction in failing to consider the evidence of Dr. McDonough.

- (3) The nature and extent of claimant's injury and/or disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Appeals Board finds that the Award of the Administrative Law Judge properly sets out both findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The findings and conclusions enumerated in the Award of the Administrative Law Judge are both accurate and appropriate and the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein as to the issues raised.

Claimant alleges accidental injury on October 22, 1993, while changing a tire in the employ of respondent. The medical records, including the emergency room records and the testimony of Dr. William Von Ruden, do not support claimant's contention that he suffered a torsion on the date alleged. The medical evidence of Dr. Von Ruden when coupled with that of Dr. James F. Burpee supports a finding that claimant's ongoing problems are the result of a rapid or sudden inflammation and infection causing the death of his testicular cells and did not occur from an accidental injury arising out of and in the course of his employment.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Jon L. Frobish dated February 29, 1996, should be, and is hereby, affirmed.

AN AWARD IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS and the claimant, Joseph P. Martin, is denied an award against the respondent, Martin Harvesters, and its insurance carrier, U.S.F. & G., for an alleged accidental injury incurring on October 22, 1993.

The claimant's contract of employment with his attorney is approved insofar it is not in contravention to the statutory requirements of K.S.A. 44-536.

The fees necessary to defray the expense of administration of the Kansas Workers Compensation Act are hereby assessed against the respondent and its insurance carrier to be paid as follows:

Susan Maier	
Transcript of Regular Hearing	\$197.40
Deposition of James Burpee, M.D.	\$231.90
Deposition of William Von Ruden, M.D.	\$195.50
 Ireland Court Reporting	
Deposition of W. David McDonough, M.D.	\$267.39

IT IS SO ORDERED.

Dated this ____ day of August 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Gary R. Hathaway, Ulysses, KS
Patricia Wohlford, Overland Park, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director